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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ANDRZEJ TOCZEK and JOHN K. GRAY,  
derivatively on behalf of PAYSIGN, INC.,

Plaintiff,

vs.

MARK R. NEWCOMER, MARK ATTINGER,  
DANIEL H. SPENCE, JOAN M. HERMAN,  
DAN R. HENRY, BRUCE A. MINA, DENNIS  
TRIPLETT, and QUINN WILLIAMS,

Defendants,

and

PAYSIGN, INC.,

Nominal Defendant.

Case No. 2:20-cv-01722-JCM-NJK

**PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
DERIVATIVE SETTLEMENT AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

**MOTION**

Pursuant to Federal Rule of Civil Procedure 23.1(c), and upon the Stipulation and Agreement of Settlement (the "Stipulation") dated November 26, 2024, attached as Exhibit 1 to the Memorandum of Points and Authorities in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Derivative Settlement filed concurrently herewith, plaintiffs Andrzej Toczec and John K. Gray (together, the "Nevada Plaintiffs"), derivatively on behalf of Paysign, Inc. ("Paysign" or the "Company") respectfully move this Court for entry of an Order in the form attached as Exhibit B to the Stipulation (the parties' proposed "Preliminary Approval Order"):

1. Granting preliminary approval of the proposed settlement (the "Settlement") on the terms set forth in the Stipulation;
2. Approving the proposed substance and form of the Notice and Summary Notice, attached as

Exhibits C and D to the Stipulation;<sup>1</sup>

3. Preliminarily approving Plaintiffs' Counsel's unopposed Fee and Expense Amount; and

4. Scheduling a Settlement Hearing date.

For the reasons set forth in the Stipulation and the accompanying Memorandum and Points of Authorities in Support, Nevada Plaintiffs respectfully request that the Court find that the proposed Settlement merits preliminary approval.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Nevada Plaintiffs are pleased to present for preliminary approval the proposed Settlement as set forth in the Stipulation. If approved, the Settlement would fully resolve the above-captioned consolidated shareholder derivative action (the "Nevada Action") brought for the benefit of Paysign, as well as the substantially similar shareholder derivative actions brought by plaintiff Simone Blanchette ("Blanchette" and together with the Nevada Plaintiffs, "Plaintiffs") captioned *Blanchette v. Paysign, Inc. et al.*, Case No. 2:23-cv-01632-JCM-BNW, pending in this Court (the "*Blanchette* Action), and plaintiff Mo Jeewa ("Jeewa"), captioned *Jeewa v. Newcomer, et al.*, Case No. 2:23-cv-02129-RFB-EJY pending in the Court (the "*Jeewa* Action," and together with the Nevada Action and the *Blanchette* Action, the "Derivative Actions"). The Derivative Actions assert claims on behalf of Paysign against the Individual Defendants<sup>2</sup> for alleged violations of Section 14(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), breaches of fiduciary duty, unjust enrichment, and waste of corporate assets related to, *inter alia*, the Individual Defendants' dissemination of allegedly false and misleading statements regarding Paysign's information technology ("IT") controls, disclosure controls, and internal controls over its financial reporting. (Stip. §I.)

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in the Stipulation attached hereto as Exhibit 1, and all emphasis is added, and internal quotation marks and citations are omitted.

<sup>2</sup> "Individual Defendants" means Mark R. Newcomer, Mark Attinger, Daniel H. Spence, Joan M. Herman, Dan R. Henry, Bruce A. Mina, Dennis Triplett, and Quinn Williams.

1       The Settlement is the product of hard-fought, arm's-length negotiations by experienced and  
2 knowledgeable counsel with the assistance of Michelle Yoshida, Esq. ("Ms. Yoshida" or the "Mediator")  
3 of Phillips ADR Enterprises ("PADRE"), a well-respected neutral with extensive experience mediating  
4 complex shareholder disputes. The substantive consideration for the Settlement takes the form of a series  
5 of material, long-term corporate governance reforms (the "Reforms") which are carefully tailored to  
6 increase the Company's focus and oversight on its operations and public reporting, and which are designed  
7 to prevent recurrence of the same or similar alleged misconduct and corporate injuries at issue in the  
8 Derivative Actions. While the Defendants deny any wrongdoing (Stip. §III), the Company and its board  
9 of directors (the "Board") have acknowledged and agreed that the Reforms confer substantial benefits  
10 upon Paysign and its stockholders (Stip. ¶2.2), the value of which falls well within the range that might  
11 be approved as fair, reasonable, and adequate, particularly in light of the significant costs, risks, delays,  
12 and management distraction that would be entailed in any attempt to secure a superior recovery through  
13 further litigation.

14       Pursuant to the Settlement, Paysign's Board shall adopt resolutions and amend Board committee  
15 charters, corporate governance documents, and/or the Company's Bylaws<sup>3</sup> to ensure the adoption,  
16 implementation, and maintenance of the Reforms, which shall remain in effect for no less than five (5)  
17 years. (Stip. ¶2.1.) The Reforms are designed to address and prevent similar misconduct and corporate  
18 injury as that alleged in the Derivative Actions, and include, *inter alia*: the establishment of a new  
19 management-level Information Technology Development Committee (the "TDC"), an independent  
20 outside auditor rotation policy, enhancements to the charter of the Audit Committee, improvements to the  
21 Chief Compliance Officer ("CCO") position, the establishment of a new, management-level Disclosure  
22 Committee, improved insider trading controls, and the establishment of a compensation clawback policy  
23 (the "Clawback Policy"). The Reforms are detailed in Exhibit A to the Stipulation.

24       The Reforms directly and comprehensively address the alleged lapses in governance, monitoring,  
25 internal controls, oversight, and disclosure that Plaintiffs contend permitted the alleged wrongdoing and  
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27       <sup>3</sup> The term "Bylaws" refers to the Second Amended and Restated Bylaws of Paysign, Inc. (dated  
28 March 7, 2024).



1 corporate injury to occur, thereby significantly reducing the likelihood of recurrence and laying the  
2 foundation necessary to restore and maintain Paysign's reputation and investor confidence in the integrity  
3 of Paysign's corporate disclosures. Paysign acknowledges and agrees that the filing, pendency, and  
4 settlement of the Derivative Actions was the cause of the Company's decision to adopt, implement, and  
5 maintain the Reforms, and that the Reforms confer substantial benefits upon Paysign and its stockholders.  
6 (Stip. ¶2.2.)

7 Only after agreeing in principle on the material terms of the Settlement did the Parties negotiate,  
8 with substantial assistance from the experienced, nationally reputed Mediator, Plaintiffs' Counsel's  
9 attorneys' fees and expenses that would be payable by Defendants' insurers, subject to approval by the  
10 Court, in recognition of the substantial benefits conferred on the Company by the Reforms due to the  
11 efforts of Plaintiffs' Counsel. (Stip. §I.E.) On October 4, 2024, the Parties agreed that Defendants'  
12 insurers will pay \$607,500.00 in attorneys' fees and expenses (the "Fee and Expense Amount") to  
13 Plaintiffs' Counsel, subject to Court approval. (*Id.*) Plaintiffs' Counsel also seeks modest service awards  
14 in the amount of \$2,000.00 (the "Service Awards") to be paid to each of the Plaintiffs from the Fee and  
15 Expense Amount, in recognition of Plaintiffs' participation and effort in the prosecution of the Derivative  
16 Actions. (Stip. ¶4.4.)

17 At the preliminary approval stage, the Court need only determine that the proposed Settlement  
18 falls within a range that might ultimately be found to be fair, reasonable, and adequate, such that notice of  
19 the Settlement should be provided to Current Paysign Stockholders, and that the Settlement Hearing  
20 should be scheduled for consideration of final settlement approval. The Settlement plainly meets this  
21 standard. The Settlement guarantees substantial benefits that will confer significant value upon the  
22 Company over the course of many years, and is fair and reasonable, particularly when balanced against  
23 the costs, risks, delay, and disruption that would be entailed in continued litigation. Moreover, the  
24 Settlement process was fair and not collusive. The Settlement is the product of the full-day Mediation  
25 overseen by Ms. Yoshida and additional months of hard-fought negotiations among the Parties, each  
26 represented by experienced, well-informed counsel, facilitated by a respected neutral familiar with the  
27 relevant law and particular subject matter. The proposed form and manner of notice and the schedule for  
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consideration of final approval meet applicable standards, as they inform Current Paysign Stockholders of the Settlement's essential terms and afford a fair opportunity for comment and objection.

Accordingly, for the reasons set forth herein and in the record, the Nevada Plaintiffs respectfully request that the Court: (1) enter the Parties' proposed Preliminary Approval Order annexed to the Stipulation as Exhibit B, thereby granting preliminary approval of the proposed Settlement and finding, at this preliminary stage, that it is fair, reasonable, and adequate; (2) approve the Parties' proposed form and manner of providing Notice to Current Paysign Stockholders, annexed to the Stipulation as Exhibits C and D, and find that such Notice constitutes the best notice practicable under the circumstances, constitutes due and sufficient notice of the matters set forth in the Notice to all Persons entitled to receive notice, and fully satisfies the requirements of due process, Fed. R. Civ. P. 23.1, and all other applicable laws and rules; and (3) schedule a Settlement Hearing on a date at least forty-five (45) calendar days after entry of an Order preliminarily approving the Settlement in order to determine: (i) whether the Settlement should be approved as fair, reasonable, and adequate; and (ii) whether a final judgment should be entered that is in substance materially the same as the Parties' proposed order annexed to the Stipulation as Exhibit E, dismissing with prejudice the Nevada Action.

Defendants do not oppose the Motion or any of the requested relief.

## **II. FACTUAL BACKGROUND**

### **A. Summary of Allegations**

Nominal defendant Paysign is a card payment solutions provider and an integrated payment processor based in Henderson, Nevada, which services prepaid debit cards sponsored by other companies. (¶2.<sup>4</sup>) The Company earns revenue from services such as transaction processing, cardholder enrollment, value loading, account management and customer service-related activities. (*Id.*)

On March 16, 2020, the Company announced a delay in the filing of its 2019 10-K due to a material weakness in its internal controls over financial reporting and IT general controls. (¶8.) On this news, the price of Paysign's common stock declined by nearly 17% from its previous day closing price of \$5.52 per

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<sup>4</sup> Unless otherwise noted, references herein to "¶\_\_" or "¶¶\_\_" are to the Verified Stockholder Derivative Complaint filed by Plaintiff John K. Gray on May 9, 2022. (ECF No. 1)

1 share to close at \$4.59 per share on March 16, 2020. (*Id.*) The price of Paysign's common stock declined  
2 again to close at \$4.42 per share on March 17, 2020, and \$4.06 per share on March 18, 2020. (*Id.*)

3 On March 31, 2020, Paysign issued a press release announcing that the Company would postpone  
4 its earnings results call scheduled for that same day "to complete its year-end closing procedures." (§9.)  
5 On this news, the price of Paysign's common stock declined by over 22% from its previous day closing  
6 price of \$5.16 to close at \$4.35 per share on April 1, 2020. (*Id.*) The price of Paysign's common stock  
7 declined again on April 2, 2020 to close at \$4.03 per share. (*Id.*)

8 In April 2020, the Company disclosed that material weaknesses in its internal controls over  
9 financial reporting existed as of December 31, 2019, including "lack[ing] sufficient monitoring and  
10 disclosure controls to prevent and terminate the employment of an individual barred from practicing before  
11 the [SEC] who assisted the Company in accounting matters related to the preparation of its financial  
12 statements for 2017, 2018, and 2019." (§10.) As for its IT general controls, the Company disclosed that  
13 the material internal controls weaknesses related to software updates. (*Id.*)

14 Plaintiffs allege that, *inter alia*, between March 12, 2019 through September 17, 2020, at least, the  
15 Individual Defendants breached their fiduciary duties by issuing and/or causing the Company to issue  
16 materially false and misleading statements (including by soliciting a materially false and misleading proxy  
17 statement in violation of Section 14(a) of the Exchange Act) and by failing to disclose material facts to  
18 the public regarding, among other things, that: (1) the Company failed to design, implement, and maintain  
19 effective IT general controls, specifically pertaining to user access and the Company's systems change  
20 management; (2) the Company failed to maintain effective disclosure controls and internal controls over  
21 its financial reporting; and (3) due to the foregoing, the Company would be forced to delay filing its 2019  
22 Annual Report on SEC Form 10-K and holding its 2019 year-end earnings call. (Stip. §I.) The Derivative  
23 Actions also allege that the Individual Defendants breached their fiduciary duties by failing to correct  
24 and/or causing the Company to fail to correct these false and misleading statements and omissions of  
25 material fact to the investing public, while certain of the Individual Defendants engaged in insider sales.<sup>5</sup>  
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27 <sup>5</sup> Based on these events and disclosures, a securities class action was filed in this Court against the  
28 Company and certain of the Individual Defendants for violations of the Exchange Act, alleging



(*Id.*)

## **B. Procedural History**

### **1. The Nevada Action**

On September 17, 2020, plaintiff Toczek filed a Verified Shareholder Derivative Complaint on behalf of nominal defendant Paysign in this Court alleging claims for breaches of fiduciary duty, unjust enrichment, and waste of corporate assets under Nevada state law, and for violations of Section 14(a) of the Exchange Act, against the Individual Defendants, in a case styled as *Toczek v. Newcomer, et al.*, Case No. 2:20-cv-01722-JCM-NJK (the “*Toczek Action*”). (ECF No. 1). On May 9, 2022, plaintiff Gray filed a substantially similar Verified Stockholder Derivative Complaint on behalf of nominal defendant Paysign against the Individual Defendants, in a case styled as *Gray v. Attinger, et al.*, Case No. 2:22-cv-00735-GMN-VCF (the “*Gray Action*”). (*Gray Action*, ECF No. 1).

On April 20, 2023, nominal defendant Paysign filed an Unopposed Motion to Consolidate Related Cases in the Court, requesting that the Court consolidate the *Toczek* and *Gray* Actions. (ECF No. 22). On May 10, 2023, the Court issued an order granting the Unopposed Motion to Consolidate Related Cases, thereby consolidating the *Toczek* and *Gray* Actions for all purposes under Case No. 2:20-cv-01722-JCM-NJK (forming the Nevada Action). (ECF No. 23).

### **2. The Blanchette Action**

On October 1, 2023, plaintiff Blanchette filed a Verified Shareholder Derivative Complaint on behalf of Paysign in the Eighth Judicial District Court, Clark County, Nevada asserting claims for violations of Section 10(b) of the Exchange Act, as well as for breaches of fiduciary duty, unjust enrichment, aiding and abetting breach of fiduciary duty, and gross mismanagement against the

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substantially the same false and misleading statements that are alleged in the Derivative Actions, captioned *Shi v. Paysign, Inc. et al.*, Case No. 2:20-cv-00553-GMN-DJA (the “*Securities Class Action*”). On January 12, 2021, the lead plaintiffs in the Securities Class Action filed an amended complaint for violations of the Exchange Act against the Company and defendants Newcomer, Attinger, and Spence. (Securities Class Action, ECF No. 22). On February 9, 2023, U.S. District Judge Gloria M. Navarro denied, in part, the defendants’ motion to dismiss in the Securities Class Action. (Securities Class Action, ECF No. 42). On December 15, 2023, the parties to the Securities Class Action executed a Stipulation of Settlement. (Securities Class Action, ECF No. 63-2). On April 18, 2024, the Court granted final approval of the settlement of the Securities Class Action. (Securities Class Action, ECF No. 69).



1 Individual Defendants. (*Blanchette* Action, ECF No. 1-1). Defendants' counsel in the *Blanchette* Action  
2 accepted service on behalf of all Defendants and, on October 10, 2023, removed the *Blanchette* Action  
3 to the Court pursuant to 28 U.S.C. §§ 1441, 1446. (*Blanchette* Action, ECF No. 1).

4 On November 8, 2023, the parties to the *Blanchette* Action agreed to stay the *Blanchette* Action  
5 until December 7, 2023, to complete discussions with counsel for Nevada Plaintiffs in the Nevada Action  
6 and with counsel for Defendants regarding coordination of the Derivative Actions, which stay the Court  
7 so ordered on November 15, 2023. (*Blanchette* Action, ECF Nos. 10, 11).

8 On December 7, 2023, the parties to the *Blanchette* Action filed an updated status report  
9 indicating that the Parties had made substantial progress towards the potential settlement of the Nevada  
10 Action, which would include the *Blanchette* Action, and requested that the *Blanchette* Action be stayed  
11 for sixty (60) days pending the completion of the settlement negotiations of the Nevada Action, which  
12 request the Court so granted on December 11, 2023. (*Blanchette* Action, ECF Nos. 12, 13). The parties  
13 to the *Blanchette* Action made a similar request to extend the stay on January 29, 2024, which the Court  
14 so ordered on February 2, 2024. (*Blanchette* Action, ECF Nos. 14, 15).

15 On March 28, 2024, the parties to the *Blanchette* Action filed a Joint Status Report, informing  
16 the Court, *inter alia*, that the Parties had made significant progress towards reaching a settlement.  
17 (*Blanchette* Action, ECF No. 16). The parties to the *Blanchette* Action requested that the Court stay the  
18 *Blanchette* Action for an additional sixty (60) days, until May 29, 2024, which the Court so ordered on  
19 April 1, 2024. (*Blanchette* Action, ECF Nos. 16, 17). On July 27, 2024, the parties to the *Blanchette*  
20 Action filed a further Joint Status Report informing the Court that as of that time a settlement had not  
21 been reached, and setting forth a proposed briefing schedule on Defendants' anticipated motion to  
22 dismiss. Subsequent to the filing of that Joint Status Report, as set forth below, the Parties reached  
23 agreement on the proposed Settlement.

### 24 **3. The Jeewa Action**

25 On May 28, 2021, plaintiff Mo Jeewa ("Jeewa") made a pre-suit litigation demand on the Board  
26 to investigate and bring action against the Individual Defendants for, *inter alia*, breach of their fiduciary  
27 duties. (Stip. §I.D.) On June 10, 2021, Paysign responded by letter, advising Jeewa of the existence of  
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1 the *Toczek* Action, which made essentially the same allegations. (*Id.*) Paysign invited Jeewa to share  
2 with the Board any information he deemed relevant to the Board's consideration, and said that Paysign  
3 would consider Jeewa's demand. (*Id.*)

4 Jeewa next wrote to Paysign on May 16, 2022, asking for an update. *Id.* Paysign responded on  
5 June 9, 2022, informing Jeewa of the filing of the *Gray* Action, and again inviting Jeewa to share with  
6 the Board any information he deemed relevant. (*Id.*) Jeewa responded that same day, saying he would  
7 share information whenever he deemed it appropriate. (*Id.*) On July, 20, 2022 Paysign informed Jeewa  
8 that in light of the existence of the *Toczek* and *Gray* Actions which preserved Plaintiffs' derivative  
9 claims, it saw no point in pursuing certain tolling agreements Jeewa was asking Paysign to pursue. (Stip.  
10 §I.D.)

11 Jeewa wrote again on April 17, 2023 and on June 21, 2023, repeating his demand that the Board  
12 take immediate action, and on June 28, 2023 Paysign repeated its view that Jeewa's allegations were  
13 essentially identical to those asserted in the Nevada Action, and said its Board "continues to monitor  
14 developments in both the Securities Class Action, and the Derivative Litigation, in deciding Paysign's  
15 best course of action." (*Id.*)

16 On December 27, 2023, plaintiff Jeewa filed a Verified Stockholder Derivative Complaint in the  
17 Court, raising claims for breach of fiduciary duty, breach of fiduciary duty for wrongful refusal, and  
18 unjust enrichment against the Individual Defendants and alleging that the Board wrongfully refused  
19 plaintiff Jeewa's demand. (*Jeewa* Action, ECF No. 1).

### 20 **C. Settlement Negotiations**

21 In April 2023, the Parties to the Nevada and *Blanchette* Actions agreed to mediate in connection  
22 with the Derivative Actions, in order to attempt to resolve the claims asserted therein. (Stip. §I.E.) The  
23 Mediation was scheduled for May 10, 2023, to be overseen by Ms. Yoshida of PADRE. (*Id.*)

24 On April 18, 2023, the Nevada Plaintiffs sent a settlement demand letter to Defendants which,  
25 *inter alia*, proposed a settlement framework that included a comprehensive set of corporate governance  
26 reforms designed to address the governance deficiencies that resulted in the wrongdoing alleged in the  
27 Nevada Action. (*Id.*) Moreover, in anticipation of the Mediation, the Parties submitted to the Mediator  
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1 and exchanged with each other detailed mediation statements, addressing relevant arguments and  
2 allegations in the Derivative Actions. (*Id.*)

3 On May 10, 2023, the Parties in the Nevada Action and the *Blanchette* Action participated in the  
4 full-day Mediation with the Mediator. (*Id.*) The Parties were unable to reach an agreement on settlement  
5 at the Mediation but continued to engage in settlement negotiations in the following months. (Stip. §I.E.)  
6 Ultimately, on November 21, 2023, the Parties were able to reach an agreement in principle on the  
7 substantive terms of the Settlement, including the Reforms that Paysign would adopt as consideration for  
8 the Settlement. (*Id.*)

9 After the Parties reached an agreement in principle on the material terms of the Settlement, the  
10 Parties separately negotiated at arm's length, with the Mediator's assistance, the attorneys' fees and  
11 expenses to be paid to Plaintiffs' Counsel in consideration of the substantial benefits conferred on the  
12 Company by the Reforms due to the efforts of Plaintiffs' Counsel. (*Id.*) Following protracted negotiations,  
13 on October 4, 2024, the Parties agreed that Defendants' insurers will pay the Fee and Expense Amount of  
14 \$607,500 to Plaintiffs' Counsel, subject to Court approval. (*Id.*)

### 15 **III. THE SETTLEMENT TERMS**

16 The Settlement commits the Board to adopting resolutions and amending Board committee  
17 charters, corporate governance documents, and/or PaySign's Bylaws to ensure the adoption,  
18 implementation, and maintenance of the Reforms, which shall remain in effect for no less than five (5)  
19 years. The Reforms, detailed in Exhibit A to the Stipulation, are designed to prevent the reoccurrence of  
20 the alleged misconduct at issue in the Derivative Actions, including the decision-making processes and  
21 oversight lapses which Plaintiffs contend damaged Paysign. In sum, per the Reforms:

- 22
- 23 • Paysign shall establish the management-level TDC, which shall be responsible for  
24 overseeing key technological initiatives and the design, development, implementation,  
25 and maintenance of Paysign's IT, including Paysign's primary software relating to  
26 management of its customers' accounts, and the remediation of issues and challenges  
27 related thereto. The TDC's duties include, *inter alia*, (i) meeting with relevant  
28 engineering teams at least once quarterly, at which time each team shall report to the  
TDC on the team's activities, progress, challenges, and developments as they relate to  
Paysign's IT, (ii) ensuring proper compliance with an established protocol or internal  
control mechanism for testing proposed software designs and or proposed changes to  
existing software designs; and (iii) assisting the Disclosure Committee with the review



1 and disclosure of material information concerning the performance, capabilities, or  
2 other technical details of Paysign's software to ensure that Paysign's public statements  
3 about its software comply with applicable laws and regulations.

- 4 • The Board shall adopt a policy to rotate Paysign's independent auditing firm every  
5 eight (8) years.
- 6 • Paysign shall adopt a resolution to amend its Audit Committee Charter to ensure  
7 Paysign's audit processes and procedures are effective and adequately overseen.  
8 Amendments shall include requiring the Audit Committee to, *inter alia*: (i) meet at least  
9 six (6) times annually and in separate executive sessions with Paysign's management  
10 (including the CRO), independent auditor, and internal auditor in carrying out its duties,  
11 and meet quarterly in separate sessions with the CLO and outside counsel to review  
12 any legal matters pertinent to carrying out its duties; (ii) review Paysign's Code of  
13 Ethics ("Code of Ethics") with the assistance of the CCO at least annually, in  
14 monitoring compliance with the Code of Ethics; and (iii) solicit the input of department  
15 representatives as necessary to review the accuracy of public disclosures related to  
16 issues within their expertise.
- 17 • The Board shall direct Paysign to amend the responsibilities of the CCO, which will  
18 report to the full Board and its committees. The CCO's duties shall include, to the  
19 extent they already exist, oversight and administration of Paysign's corporate  
20 governance policies (including the Code of Ethics), fostering a culture that integrates  
21 compliance and ethics into business processes and practices through awareness and  
22 training, maintaining and monitoring a system for accurate public and internal  
23 disclosures and reporting and investigating potential compliance and ethics concerns.  
24 The CCO shall be primarily responsible for managing Paysign's ethics and compliance  
25 program and assisting the Board in fulfilling its oversight duties with regard to  
26 Paysign's compliance with applicable laws, regulations, and accounting standards, and  
27 the dissemination of true and accurate information.
- 28 • Paysign shall create a new, separate, management-level Disclosure Committee that  
establishes effective procedures and protocols at Paysign relating to financial  
disclosures, to ensure that all of Paysign's significant public statements, including, but  
not limited to, SEC filings, material press releases, and Paysign's significant statements  
to non-Company individuals at public or private meetings, are reviewed for accuracy,  
integrity, and completeness, and for reviewing with management its ongoing  
compliance with these protocols and procedures.
- Paysign shall post the Insider Trading Policy on its website, and the Board shall require  
that all insider transactions be made subject to Rule 10b5-1 trading plans.
- Paysign shall adopt a resolution to amend its Governance Committee Charter, which  
shall require, *inter alia*, the Governance Committee to meet with each prospective new  
Board member prior to his or her nomination to the Board and then recommend whether  
such individual shall be nominated for membership to the Board, and for such review  
to include a background check.

- 1 • Payscale shall adopt a resolution to amend the Compensation Committee Charter, which  
2 shall require, *inter alia*, that (i) in determining, setting, or approving annual short-term  
3 compensation arrangements, the Compensation Committee take into account the  
4 particular executive's performance as it relates to both legal compliance and  
5 compliance with internal policies and procedures; and (ii) in determining, setting, or  
6 approving termination benefits and/or separation pay to executive officers, the  
7 Compensation Committee to take into consideration the circumstances surrounding the  
8 particular executive officer's departure and the executive's performance as it relates to  
9 both legal compliance and compliance with internal policies and procedures.  
10
- 11 • Payscale shall implement an annual employee training program, which shall be  
12 mandatory for all directors, officers, employees, independent contractors, and agents  
13 of Payscale, and which shall include coverage of risk assessment and compliance,  
14 Payscale's Code of Ethics, Insider Trading Policy, various compensation policies, and  
15 any and all other manuals or policies established by Payscale concerning legal or ethical  
16 standards of conduct to be observed in connection with work performed for Payscale.
- 17 • The Board shall adopt certain reforms relating to its composition and practices,  
18 including, *inter alia*, limitations on service by independent directors on boards of other  
19 public companies and director term limits.
- 20 • Payscale's Bylaws shall be amended, as necessary, to provide that at least a majority of  
21 the Board shall consist of directors who meet the criteria for director independence set  
22 forth by the NASDAQ Listing Rules, and any other statutory director independence  
23 requirement, as well as certain other qualifications.
- 24 • Payscale shall establish a specific policy addressing measures taken to promote Board  
25 diversity.
- 26 • Payscale shall include a standalone whistleblower policy (the "Whistleblower Policy")  
27 on its website and to the extent it does not do so already, shall amend the Whistleblower  
28 Policy so as to, *inter alia*, encourage interested parties to bring forward ethical and legal  
violations and/or a reasonable belief that ethical and legal violations have occurred to  
the parties identified in the Code of Ethics, the CCO, Human Resources Manager,  
Audit Committee, and/or the third-party reporting service provider so that action may  
be taken to resolve the problem.
- The Company shall adopt (or will have already adopted) the Clawback Policy, which  
shall apply to, *inter alia*, certain incentive-based compensation, determination of  
erroneously-awarded compensation, and recovery of erroneously-awarded  
compensation.

Payscale and the Board have acknowledged and agreed that the filing, pendency, and settlement of the Derivative Actions was the cause of the Company's decision to adopt, implement, and maintain the



1 Reforms. Paysign and the Board have further acknowledged and agreed that the Reforms confer  
 2 substantial benefits to Paysign and its shareholders.

#### 3 **IV. LEGAL STANDARDS**

4 Federal Rule of Civil Procedure (“Rule”) 23.1(c) provides that “[a] derivative action may be settled  
 5 ... only with the court’s approval.” There is a strong judicial policy favoring settlement. *In re Pac. Enters.*  
 6 *Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th  
 7 Cir. 1992) (“strong judicial policy...favors settlements” in complex cases); *Officers for Justice v. Civil*  
 8 *Serv. Comm’n*, 688 F.2d 615, 635 (9th Cir. 1982) (“settlement process [is] favored in the law”); *U.S. v.*  
 9 *McInnes*, 556 F.2d 436, 441 (9th Cir. 1977) (“there is an overriding public interest in settling and quieting  
 10 litigation”). Settlement of shareholder derivative actions is particularly favored because such litigation is  
 11 “notoriously difficult and unpredictable.” *In re NVIDIA Corp. Derivative Litig.*, Master File No. C-06-  
 12 06110-SBA (JCS), 2008 U.S. Dist. LEXIS 117351, at \*7 (N.D. Cal. Dec. 19, 2008); *see also In re Wells*  
 13 *Fargo & Co. S’holder Derivative Litig.*, 2019 U.S. Dist. LEXIS 240004, at \*21 (N.D. Cal. May 19, 2019)  
 14 (“courts have recognized that it is often difficult for plaintiffs to prevail in derivative actions”).

15 The approval of a proposed derivative settlement is a two-step process—preliminary approval  
 16 followed by a final approval hearing. *Hunichen v. Atonomi LLC*, No. C19-0615-RAJ-SKV, 2021 U.S.  
 17 Dist. LEXIS 239909, at \*\*11-12 (W.D. Wash. Nov. 12, 2021). At the preliminary approval stage, the  
 18 court’s evaluation of proposed settlement terms is “limited to the extent necessary to reach a reasoned  
 19 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the  
 20 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
 21 concerned.” *Officers for Justice*, 688 F.2d at 625; *accord Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027  
 22 (9th Cir. 1998); *Hunichen*, 2021 U.S. Dist. LEXIS 239909, at \*3 (holding that Court need only determine  
 23 whether a proposed settlement is “within the range of possible approval” as fair, reasonable and adequate  
 24 and that notice should be sent to shareholders). “Preliminary approval amounts to a finding that the terms  
 25  
 26  
 27  
 28



1 of the proposed settlement warrant consideration by [Current Paysign Stockholders] and a full  
2 examination at a final hearing.” *Hunichen*, 2021 U.S. Dist. LEXIS 239909, at \*3. Following preliminary  
3 approval and notice, the Court reviews the fairness of the settlement at a final fairness hearing and, if  
4 appropriate, renders a finding that the settlement is “fair, reasonable, and adequate[.]” Fed. R. Civ. P.  
5 23(e)(2).  
6

7 Thus, at this preliminary stage, the Court need only conclude that the Settlement is within the range  
8 of possible approval for the purposes of providing notice to Current Paysign Stockholders and holding the  
9 Settlement Hearing.

10 **V. THE PROPOSED SETTLEMENT MERITS PRELIMINARY APPROVAL**

11 Plaintiffs respectfully submit that the Settlement is within the range of possible approval and  
12 should therefore be preliminarily approved.  
13

14 **A. The Settlement Is the Result of Good Faith, Arm’s-Length Negotiations**

15 Settlements achieved through extensive, arm’s-length negotiations conducted by experienced,  
16 well-informed counsel enjoy a presumption of fairness. *See, e.g., Rodriguez v. West Publ’g Corp.*, 563  
17 F.3d 948, 965 (9th Cir. 2009) (“We put a good deal of stock in the product of an arms-length, non-  
18 collusive, negotiated resolution.”); *Villanueva v. Morpho Detection, Inc.*, No. 13-cv-05390-HSG, 2015  
19 U.S. Dist. LEXIS 106183, at \*14 (N.D. Cal. Aug. 12, 2015) (“An initial presumption of fairness is usually  
20 involved if the settlement is recommended by class counsel after arm’s-length bargaining”). Significant  
21 weight is accorded to the parties’ belief that the litigation should be settled on the proposed terms, since  
22 “[p]arties represented by competent counsel are better positioned than courts to produce a settlement that  
23 fairly reflects each party’s expected outcome in litigation.” *Pac. Enters.*, 47 F.3d at 378.  
24

25 Here, the Settlement was negotiated between experienced counsel possessing a firm understanding  
26 of the strengths and weaknesses of the claims and defenses asserted, is the product of significant give and  
27 take by the Parties, and was reached after many months of hard-fought negotiations, including the full-  
28

1 day Mediation with an experienced neutral and extensive subsequent negotiations. (Stip., §§I.E, II.)

2 Each of the settling Parties was represented by zealous and able counsel with extensive experience  
3 in complex derivative litigation who were fully informed regarding the facts and the law applicable to the  
4 core claims and defenses. In addition, Plaintiffs' Counsel have thoroughly considered the facts and law  
5 underlying the Derivative Actions and have conducted substantial investigation and analysis relating to  
6 the claims and the underlying events alleged in the Derivative Actions including, *inter alia*, (i) reviewing  
7 and analyzing Paysign's press releases, public statements, and filings with the SEC; (ii) reviewing and  
8 analyzing securities analysts' reports and advisories and media reports about the Company; (iii) reviewing  
9 and analyzing the pleadings and orders in the Securities Class Action; (iv) researching the applicable law  
10 with respect to the claims alleged and the potential defenses thereto; (v) preparing and filing initial  
11 complaints in the Derivative Actions; (vi) researching and evaluating factual and legal issues relevant to  
12 the claims; (vii) engaging in settlement negotiations with Defendants' counsel regarding the specific facts,  
13 and perceived strengths and weaknesses of the Derivative Actions, and other issues in an effort to facilitate  
14 negotiations; (viii) researching the Company's corporate governance structure in connection with  
15 settlement efforts; (ix) preparing comprehensive written settlement demands and modified demands over  
16 the course of the Parties' settlement negotiations; (x) preparing a mediation statement; (xi) participating  
17 in the full-day Mediation, and (xii) negotiating and drafting the comprehensive Stipulation. (Stip. §II.)  
18 The accumulation of the information discovered through the above efforts permitted Plaintiffs and  
19 Plaintiffs' Counsel to be well-informed about the strengths and weaknesses of the derivative claims and  
20 to engage in effective settlement negotiations with Defendants.  
21

22 Moreover, the Parties' agreement that the Reforms confer substantial benefits to Paysign and its  
23 shareholders, (Stip. ¶2.2) further supports that the Settlement is within the range of what may be approved  
24 as fair, reasonable, and adequate, and should be granted preliminary approval. *See In re First Cap.*  
25 *Holdings Corp. Fin. Prods. Sec. Litig.*, 1992 U.S. Dist. LEXIS 14337, at \*8 (C.D. Cal. June 10, 1992)  
26  
27  
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(finding the belief of counsel that the proposed settlement represented the most beneficial result for the class to be a compelling factor in approving settlement); *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“[T]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.”).

In addition, the negotiations were structured to eliminate potential conflicts of interest and to ensure fairness. Paysign was represented by experienced counsel at every phase of the negotiations, which were facilitated by the experienced private Mediator who was familiar with the relevant law and the specific subject matter. Additionally, attorneys’ fees were not addressed until the Parties had reached agreement on the substantive consideration for the Settlement. *See D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a “mediator’s involvement ... helps to ensure that the proceedings were free of collusion”); *Todd v. STAAR Surgical Co.*, 2017 U.S. Dist. LEXIS 176183, at \*6 (C.D. Cal. Oct. 24, 2017) (approving settlement facilitated by “experienced mediator Michelle Yoshida of Phillips ADR”); *In re Apple Inc. Device Performance Litig.*, No. 5:18-md-02827-EJD, 2021 U.S. Dist. LEXIS 50550, at \*44 (N.D. Cal. Mar. 17, 2021) (“extensive arm’s-length negotiations between experienced counsel, including several in-person mediation sessions and additional negotiations facilitated by” a mediator rules out collusion); *HCL Partners Ltd. P’ship v. Leap Wireless Int’l, Inc.*, Lead Case No. 07-cv-2245-MMA, 2010 U.S. Dist. LEXIS 109409, at \*\*7-8 (S.D. Cal. Oct. 14, 2010) (“negotiations for several months ... and the active involvement of the mediator ... weighs considerably in favor of concluding this is not a collusive settlement”); *Satchell v. Fed. Express Corp.*, No. C03-2659-SI, 2007 U.S. Dist. LEXIS 99066, at \*17 (N.D. Cal. Apr. 13, 2007) (“assistance of an experienced mediator ... confirms that the settlement is non-collusive”).

#### **B. The Settlement Is Well Within the Range of Possible Approval**

“The principal factor to be considered in determining the fairness of a settlement concluding a shareholders’ derivative action is the extent of the benefit to be derived from the proposed settlement by



1 the corporation, the real party in interest.” *In re Pinterest Derivative Litig.*, No. C 20-08331-WHA, 2022  
2 U.S. Dist. LEXIS 103528, at \*6 (N.D. Cal. June 9, 2022); *In re OSI Sys., Inc. Derivative Litig.*, No. CV-  
3 14-2910-MWF, 2017 U.S. Dist. LEXIS 221033, at \*\*5-6 (C.D. Cal. May 2, 2017); *see also In re Apple*  
4 *Computer, Inc. Derivative Litig.*, 2008 U.S. Dist. LEXIS 108195, at \*8 (N.D. Cal. Nov. 5, 2008)  
5 (“principal factor to consider ... is the benefit to [the real party in interest] as compared to the risks posed  
6 by derivative litigation”). Courts may weigh a variety of other factors, including: “the strength of the  
7 plaintiffs’ case, the risk, expense, complexity, and likely duration of further litigation, the amount offered  
8 in settlement, the stage of the proceedings, the experience and views of counsel, and the reaction of class  
9 members to the proposed settlement.” *In re Hewlett-Packard Co. S’holder Derivative Litig.*, 716 F. App’x  
10 603, 605 (9th Cir. 2017); *Hanlon*, 150 F.3d at 1026.

12 As the U.S. Supreme Court has held, “a corporation may receive a substantial benefit” from  
13 “corporate therapeutics” that “furnish a benefit to all stockholders,” “regardless of whether the benefit is  
14 pecuniary in nature.” *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 395-96 (1970). In fact, “the effects of the  
15 suit on the functioning of the corporation may have a substantially greater economic impact on it, both  
16 long- and short-term, than the dollar amount of any likely judgment in its favor.” *Maher v. Zapata Corp.*,  
17 714 F.2d 436, 461 (5th Cir. 1983); *see also NVIDIA*, at \*\*5-6 (“[S]trong corporate governance is  
18 fundamental to the economic well-being and success of a corporation”); *Cohn v. Nelson*, 375 F. Supp. 2d  
19 844, 853 (E.D. Mo. 2005) (“Courts have recognized that corporate governance reforms ... provide valuable  
20 benefits to public companies.”). Courts routinely approve settlements where corporate governance reforms  
21 are designed effectively to prevent the same or similar alleged wrongdoing that precipitated the litigation.  
22 *See, e.g., In re Apple Computer, Inc. Derivative Litig.*; *Lewis v. Anderson*, 692 F.2d 1267, 1271 (9th Cir.  
23 1982) (finding corporate governance reforms “sufficiently beneficial” to warrant settlement approval and  
24 fee award); *In re Pfizer Inc. S’holder Derivative Litig.*, 780 F. Supp. 2d 336, 342 (S.D.N.Y. 2011)  
25 (approving settlement where therapeutics “significantly improved institutional structure for detecting and  
26  
27  
28

1 rectifying the types of wrongdoing that have, in recent years, caused extensive harm to the company”).

2       The Reforms confer substantial benefits on Paysign, thus meriting preliminary approval of the  
3 Settlement. *See supra*, section III. Here, the proposed Settlement provides material Reforms to Paysign’s  
4 corporate policies directly aimed at strengthening internal controls and governance practices so that, *inter*  
5 *alia*, the Board and the Company’s executive officers may adequately oversee and monitor Paysign’s  
6 operations and public reporting, and thereby avoid further damage as resulted from the alleged misconduct  
7 in the Derivative Actions. The comprehensive set of Reforms will make it “far less likely [that the  
8 corporation will] become subject to long and costly securities litigation in the future, as well as prosecution  
9 or investigation by regulators or prosecutors.” *Cohn*, 375 F. Supp. 2d at 853. Indeed, the Reforms confer  
10 further economic value upon Paysign and its stockholders by enacting more rigorous, independent, and  
11 effective oversight, which will improve corporate decision-making and execution of key corporate  
12 strategies; ensure accurate disclosures; and reduce the costs associated with failure to comply with  
13 disclosure and other legal or regulatory requirements. Moreover, the Reforms confer economic value by  
14 laying the foundation necessary to enhance investor confidence in the accuracy of the Company’s public  
15 disclosures, the integrity of its management, and the independence and effectiveness of the Company’s  
16 corporate governance and Board oversight and monitoring. Indeed, research by academics and leading  
17 business advisors confirms what directors of leading corporations and institutional investors know from  
18 experience: investors pay a premium for stock in companies with strong corporate governance relative to  
19 peer companies perceived to have weaker governance because strong governance correlates with long-  
20 term value creation.<sup>6</sup>

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25 <sup>6</sup> See, e.g., Lucian A. Bebchuk & Assaf Hamdani, *The Elusive Quest for Global Governance*  
26 *Standards*, 157 U. Pa. L. Rev. 1263, 1266 (2009); Paul A. Gompers, Joy L. Ishii & Andrew Metrick,  
27 *Corporate Governance and Equity Prices*, 118 Quarterly J. Econ. (2003); Lawrence D. Brown & Marcus  
28 L. Caylor, *The Correlation Between Corporate Governance and Company Performance*, Institutional  
Shareholder Services (2004); Vincent Cunat, Mireia Gine, & Maria Guadalupe, *The Vote is Cast: The*  
*Effect of Corporate Governance on Shareholder Value*, 67 J. Finance, Oct. 2012.



1 In sum, the Parties agree that the Reforms provide a substantial benefit to Paysign and its  
2 stockholders. Paysign has agreed to maintain the Reforms for a minimum of five years, which provides  
3 ample time to ensure that the Reforms become embedded in the Company's policies, practices, and  
4 corporate culture, with continuing benefits even after the expiration of the five-year commitment term.  
5 See *Cohn*, 375 F. Supp. 2d at 850 (finding that corporate governance enhancements committed for at least  
6 three years will "provide meaningful ways of avoiding the problems [the company] experienced in the  
7 recent past").

### 9 C. The Risks and Expenses of Protracted Litigation Support Settlement

10 In weighing the Settlement's benefits, courts recognize the limited utility of speculation about the  
11 possibility that further litigation might yield a materially better result. "[T]he very essence of a settlement  
12 is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Just.*, 688 F.2d  
13 at 624. "The proposed settlement is not to be judged against a hypothetical or speculative measure of what  
14 might have been achieved by the negotiators." *Id.* "In assessing the Settlement, this Court must balance  
15 the benefits accorded to [the Company] and its stockholders, and the immediacy and certainty of a  
16 substantial recovery for them, against the continuing risks of litigation." See *Cohn*, 375 F. Supp. 2d at 855.

18 Here, the Settlement's guarantee of benefits described herein far outweighs the possibility that  
19 meaningfully superior benefits might be achieved through further litigation, particularly in light of the  
20 substantial costs, delays, and management distractions continued litigation would entail, and the  
21 substantial risk that further litigation would forfeit the Settlement's benefits and result in no recovery  
22 whatsoever. Although Plaintiffs believe the derivative claims are meritorious, the risks of continued  
23 prosecution of the Derivative Actions are substantial. "[T]he odds of winning [a] derivative lawsuit [a]re  
24 extremely small." *Pac. Enters.*, 47 F.3d at 378; *Cohn*, 375 F. Supp. 2d at 852; *Lewis*, 59 F.R.D. at 528.  
26 Had Plaintiffs continued to litigate, they would have faced the risk that the Derivative Actions may not  
27 have withstood challenges at the pleading stage, especially given the difficult standard for pleading  
28

1 demand futility; demand futility under Delaware law, in particular, presents a significant pleadings-stage  
2 hurdle for derivative plaintiffs.<sup>7</sup> As the U.S. Supreme Court has recognized, the demand futility  
3 requirement is satisfied only under “extraordinary conditions[.]” *Kamen v. Kemper Fin. Servs. Inc.*, 500  
4 U.S. 90, 96 (1991)). Here, Plaintiffs would need to establish demand futility as to at least four of the seven  
5 directors on Paysign’s Board when the complaints were filed in the Derivative Actions, four of whom the  
6 Company deemed independent. (¶¶72-81.)

8 Even if Plaintiffs alleged demand futility successfully, the challenges before them would remain  
9 daunting, including, *inter alia*, (i) building a circumstantial case for liability based upon thousands of  
10 complex business and financial documents; (ii) proving actual damages in a battle of the experts; (iii)  
11 overcoming motions for summary adjudication; (iv) securing a favorable judgment at trial through  
12 circumstantial evidence comprised of complex corporate documents and the testimony of predominantly  
13 hostile percipient witnesses and contested expert testimony; (v) maintaining that judgment through post-  
14 trial motions and appeals; and (vi) enforcing any judgment as might be obtained. These challenges are  
15 amplified in shareholder derivative litigation, making it “notoriously difficult and unpredictable.” *Maher*,  
16 714 F.2d at 455; *Pac. Enters.*, 47 F.3d at 378 (“derivative lawsuits are rarely successful”); *In re AOL Time*  
17 *Warner S’holder Derivative Litig.*, 2006 U.S. Dist. LEXIS 63260, at \*15 (S.D.N.Y. Sept. 6, 2006) (“Even  
18 assuming that Plaintiffs were able to successfully establish the defendants’ liability, they then would be  
19 tasked with proving highly contested damages.”); *see also In re Apollo Grp., Inc. Sec. Litig.*, 2008 U.S.  
20 Dist. LEXIS 61995 (D. Ariz. Aug. 4, 2008), *rev’d & remanded*, 2010 U.S. App. LEXIS 14478 (9th Cir.  
21 June 23, 2010) (evidence insufficient to support jury verdict for shareholders of \$277 million). Moreover,  
22 the pre-trial discovery required to overcome these challenges would be exceedingly costly, complex, and  
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25

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26  
27 <sup>7</sup> Paysign is incorporated in the State of Nevada, so “Nevada law defines demand futility here. Nevada  
28 courts look to Delaware law for guidance on requirements for pleading demand futility.” *Israni v. Bittman*,  
473 App’x 548, 549 (9th Cir. 2012).



time-consuming, encompassing an enormous volume of documents, depositions of myriad fact witnesses, and preparation of expert reports and expert depositions. In addition, each step of the way, Defendants would continue in their vigorous defense with the assistance of their highly experienced counsel, Greenberg Traurig, LLP. The Settlement eliminates these and other risks of continued litigation, including the very real risk of no recovery for Paysign after years of additional, expensive litigation. The Settlement's guarantee of the implementation and maintenance of the material Reforms with substantial long-term economic value well demonstrate that the Settlement falls within the range of reasonableness and should be preliminarily approved. *See In re Intel Corp. Derivative Litig.*, No. 09-867-JJF, 2010 U.S. Dist. LEXIS 74661, at \*\*6-7 (D. Del. July 22, 2010) (governance benefits "outweigh the speculative potential of any monetary payment from the relevant insurance policies"); *In re AOL Time Warner S'holder Derivative Litig.*, Master File No. 02 Civ. 6302 (SWK), 2006 U.S. Dist. LEXIS 63260, at \*16 (S.D.N.Y. Sept. 6, 2006) (settlement ensures prophylaxis following corporate injury and permits management to restore full attention to business); *Athan v. U.S. Steel Corp.*, 523 F. Supp. 3d 960, 967-68 (E.D. Mich. 2021) (settlement "fair and reasonable ... in relation to the potential risk and uncertain recovery").

**VI. THE SEPARATELY NEGOTIATED FEE AND EXPENSE AMOUNT FOR PLAINTIFFS' COUNSEL IS FAIR AND REASONABLE**

Only after negotiating and reaching an agreement in principle on the material terms of the Settlement did the Parties separately negotiate at arm's length, with the Mediator's assistance, the attorneys' fees and expenses to be paid to Plaintiffs' Counsel. As a result of those arm's-length negotiations, the Parties agreed that Defendants' insurers will pay the Fee and Expense Amount to Plaintiffs' Counsel, subject to Court approval, in consideration of the substantial benefits conferred upon Paysign as a direct result of the Reforms and Plaintiffs' and Plaintiffs' Counsel's efforts in connection with the Derivative Actions.

While the Court need not address the agreed-to Fee and Expense Amount until the final approval

stage, it bears mention that the U.S. Supreme Court has endorsed this type of consensual resolution of attorneys' fees issues in these kinds of cases as the ideal toward which litigants should strive. *See, e.g., Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (negotiated fees strongly preferred) ("[a] request for attorney's fees should not result in a second major litigation"); *Mills*, 396 U.S. at 375 (holding that, under the "substantial benefit" doctrine, counsel who prosecute a shareholders' derivative case which confers benefits on the corporation are entitled to an award of attorneys' fees and costs). Further, the settlement process described above demonstrates the absence of any collusion. *See supra* at 9-10. When, as here, there is no evidence of collusion and no detriment to the parties, the Court "should give substantial weight to a negotiated fee amount." *Wehlage v. Evergreen at Arvin LLC*, No. 4:10-cv-05839-CW, 2012 U.S. Dist. LEXIS 144152, at \*6 (N.D. Cal. 2012); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001). The Court is not being called upon to fashion a fee and expense award; rather, it is being asked to determine whether the Fee and Expense Amount agreed to by well-represented Parties at arm's-length, and with the assistance of and pursuant to a recommendation by an experienced Mediator, falls within the range of reasonableness. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1296 (9th Cir. 1994). Accordingly, Plaintiffs respectfully submit that the separately negotiated Fee and Expense Amount is fair and reasonable given the substantial benefits conferred by the Derivative Actions.

Plaintiffs' Counsel further submit that the nominal Service Awards in the amount of \$2,000 to each Plaintiff to be drawn from the Fee and Expense Amount should be approved. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir. 2015).

## **VII. THE PROPOSED NOTICE SATISFIES RULE 23.1 AND AFFORDS DUE PROCESS**

Rule 23.1(c) accords "wide discretion to the District Court as to the form and content of the notice" of a derivative settlement to shareholders. *In re Gen. Tire & Rubber Co. Sec. Litig.*, 726 F.2d 1075, 1086 (6th Cir. 1985); *Maher*, 714 F.2d at 450-51. Here, the Stipulation provides that within ten (10) days after the entry of the Preliminary Approval Order, Paysign shall: (1) post a copy of the Notice and



the Stipulation (and exhibits thereto) on the Investor Relations page of the Company's website; (2) publish the Summary Notice in a press release; and (3) file with or furnish to the SEC the Notice and Stipulation (and exhibits thereto) as exhibits to an SEC Form 8-K. The Notice shall provide a link to the Investor Relations page on Paysign's website where the Notice and Stipulation (and exhibits thereto) may be viewed, which page will be maintained through the date of the Settlement Hearing. *See, e.g., In re Healthcare Servs. Grp., Inc. Derivative Litig.*, No. 2:20-cv-03426-WB, 2022 U.S. Dist. LEXIS 134005, at \*31 (E.D. Pa. July 27, 2022) (notice provided by filing a Form 8-K with the SEC and posting on the Company's investor relations webpage held to be adequate to satisfy due process).

"Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). Here, the proposed Notices are accurate and informative. The Notices provides information on the terms and provisions of the Settlement, including the Fee and Expense Amount and Service Awards; the benefits the Settlement provides to the Company and its stockholders; the date, time, and place of the Settlement Hearing; the procedure and deadlines for objecting; and how and from whom to request more information.

#### **VIII. PROPOSED SCHEDULE**

As part of the Preliminary Approval Order, Plaintiffs propose the following schedule:

Issuance of Company press release containing the contents of the Summary Notice	Within 10 days after the Court enters the Preliminary Approval Order
Filing of Notice, Stipulation, and exhibits thereto via Form 8-K with the SEC	Within 10 days after the Court enters the Preliminary Approval Order
Posting of Notice, Stipulation, and exhibits thereto on Paysign's website	Within 10 days after the Court enters the Preliminary Approval Order

Last day for counsel for Paysign to file appropriate affidavit with respect to preparation and dissemination of Notice and Summary Notice	At least 10 days prior to Settlement Hearing
Filing of all papers in support of the Settlement, including the Fee and Expense Award and Service Awards	28 days before the Settlement Hearing
Last day for Current Paysign Stockholders to comment on the Settlement	14 days before the Settlement Hearing
Filing of all reply papers in support of the Settlement, including responses to objections, if any	7 days before the Settlement Hearing
Final Settlement Hearing	Approximately 45 days after the Notice Date <sup>8</sup>

#### IX. CONCLUSION

Plaintiffs respectfully submit that the Court should preliminarily approve the Settlement, schedule the Settlement Hearing, and authorize the dissemination of Notice to Current Paysign Stockholders. The Nevada Plaintiffs have conferred with counsel for Defendants regarding this Motion, and they have informed the Nevada Plaintiffs that Defendants do not oppose the Motion.

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<sup>8</sup> Plaintiffs are prepared to coordinate a mutually agreeable date with the Court's Deputy Clerk for inclusion in the Preliminary Approval Order prior to entry.



1 Dated: December 5, 2024

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